

Domenici, Mitch McConnell, Jim Bunning.

Mr. FRIST. I ask unanimous consent that the live quorum provided for under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. FRIST. I ask unanimous consent that we resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

PARTIAL-BIRTH ABORTION BAN ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. If I could ask a question of the manager of the bill, the distinguished Senator from Pennsylvania, has the Senator had an opportunity to look over the unanimous consent request that we submitted to staff earlier today regarding the late-term abortion matter that is now before the Senate?

Mr. SANTORUM. We have been reviewing the one amendment. Has the Senator submitted all the other amendments? Only one amendment has been submitted, to my knowledge.

Mr. REID. I apologize for that. I thought staff had all the amendments, but the Senator does have our amendment, of course. It has been filed.

Mr. SANTORUM. We have one amendment. That is the only one I am aware that we have.

Mr. REID. We will make sure the Senator gets all the amendments. Can we agree on a time on this amendment before us without any second-degree amendments?

Mr. SANTORUM. Yes. In fact, I just spoke to the Senator from Washington about this.

Mr. REID. I am sorry.

Mr. SANTORUM. I suggested we would be willing to accept the amendment. She has requested that we have a rollcall vote of some sort. I am happy to agree on a reasonable time agreement.

Mr. REID. That would be fine. We would be happy to.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANTORUM. Mr. President, we are working in good faith. I thank the Democratic whip for his willingness to try to work through these amendments. We are reviewing, on our side, the Murray amendment. There may be some concerns about it. We are hopeful to get a resolution and enter into a unanimous consent agreement on the disposition of that amendment.

We have just been handed another amendment. That is a positive step, a

step in the right direction. We are hopeful we can proceed with a vote on the Murray amendment sometime today, and maybe another vote later this evening; if not, tomorrow morning. So there are fewer than a half dozen amendments we are aware of on this legislation. It looks as though we are making some progress.

Again, I thank the other side of the aisle for their cooperation.

I want to go back and go over some of the issues that have been discussed today about the underlying bill, which is the Partial-Birth Abortion Ban Act, and provide the context in which this legislation comes to the floor of the Senate.

Back three Congresses ago, in 1995 and 1996, this procedure had been unearthed, if you will. There was some medical literature that some Members of Congress found so abhorrent, for obvious reasons, that there was a strong belief that this procedure should be banned. So for three consecutive Congresses, the House of Representatives and, for two of those Congresses, the Senate debated this issue—always being blocked by the President of the United States and then, on the third attempt, by the U.S. Supreme Court.

We are now here with a version of the bill that is different from the previous versions. The version that was considered by the U.S. Supreme Court.

The reason we are back is not just to say the Court was wrong or that we disagree with the Court's judgment on constitutionality, although I do. I have to say the Court's view of the constitutionality of abortion statutes is really quite remarkable. It is not, as has been depicted by many on the other side with whom we have debated this issue in the past, that *Roe v. Wade* allows absolute freedom of choice in the first trimester, provides some limitations in the second, greater limitations in the third trimester. Lots of statements have been made on the floor that that is the case. Statements have been reported in the press. The press themselves have adopted this analysis of *Roe v. Wade*.

That is not what *Roe v. Wade* says—or *Doe v. Bolton*, its companion case—and not what subsequent cases from the U.S. Supreme Court have held. If that were the case, then the U.S. Supreme Court would have upheld the partial-birth abortion case.

Why? Because if there are legitimate restrictions on the right to abortion in the second and third trimester, I can't imagine a more legitimate restriction. But that is not what the Court has said. The Court has basically said there are no restrictions on abortion. It really is quite amazing that a right that was created, as I understand, by judicial fiat, not by the legislative process and not by the constitutional amendment process—I dare anyone to look at the U.S. Constitution and find the right to abortion. It does not exist in the U.S. Constitution. But by judicial fiat, by an act of judicial activism, this right was created.

Interestingly enough, this right, since it was created by nine people, they have no limitation on how they define it because there is nothing in the written Constitution that limits their own interpretation. It is what they say it is. It is a pure case of positive law created by an unelected group of men at the time.

What they are saying is absolutely right. There are no restrictions—none. I would challenge any of you to go through the Constitution, go through the Bill of Rights, and look at the rights within our Constitution and find another right in the Constitution that has no limit, that has no restriction. Every other right written in the Constitution has a limit, has curbs. The courts have permitted it, except this right that doesn't exist in the Constitution.

When we approach this issue of partial-birth in trying to find, in a sense, a way to put this procedure outside of *Roe*, I would argue that was the argument all along. And I believe back in 1996 when I argued this, it did not belong under *Roe v. Wade*. There are no health concerns of the mother. That is what makes all of the abortion basically unlimited up until the moment that the child is separated from the mother; that there is always a reason for the health of the mother and health defined under *Roe v. Bolton* means anything—stress, anxiety, fear. Anything associated with mental or physical health counts for allowing abortion up to the time of the separation of the child from the mother.

That is why I said there are simply no restrictions. We looked and questioned whether the partial-birth abortion procedure affects the health of women. The answer is clearly no. It does not.

There is a huge amount of congressional testimony both here in the Senate, with debates on the floor, debates on the floor of the House, testimony, overwhelming evidence, dispositive evidence that this procedure is never—I underscore the word “never”—medically necessary to preserve the health of the mother. That is a strong word, “never.” That is an absolute term—“never.” I use it with complete comfort—and have for 7 years here on the floor of the U.S. Senate. I did earlier today when I said, as I have repeated over and over again to those who believe that a health exception is necessary, give me a medical case in which a partial-birth abortion is medically necessary to preserve the health of the woman. Give me a case where it is preferable—not just necessary, where it is preferable. I can give you quote after quote, from the AMA to C. Everett Koop to the experts in late-term abortions, all of whom have said not only isn't it medically necessary but it is bad medicine. It is unhealthy. It is contraindicated.

The overwhelming body of medical evidence is that it is outside the scope of medicine. It is not taught in medical